

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

CASE NO.:

CITY OF MIAMI,

Plaintiff,

vs.

FLORIDA DEPARTMENT OF
TRANSPORTATION,

Defendant.

/

**PLAINTIFF CITY OF MIAMI'S COMPLAINT FOR INJUNCTIVE RELIEF
AND DAMAGES**

Plaintiff, CITY OF MIAMI ("CITY"), hereby sues Defendant FLORIDA
DEPARTMENT OF TRANSPORTATION ("FDOT"), and in support, states:

1. This is a civil action seeking injunctive relief and damages. This Court has jurisdiction of the subject matter pursuant to Article V, Section 5(b) of the Florida Constitution as implemented by Section 26.012 *et seq.* of the Florida Statutes.

2. At all times material hereto, Plaintiff CITY was a municipality of the State of Florida and is *sui juris*.

3. At all times material hereto, Defendant FDOT was a State agency or subdivision of the State of Florida and is otherwise *sui juris*.

4. Venue is proper in Miami-Dade County, Florida as all of the actions and/or omissions from action giving rise to this lawsuit occurred in Miami-Dade County, Florida.

5. All conditions precedent have been performed, are otherwise waived and/or are excused.

GENERAL ALLEGATIONS

6. In and around March 28, 2016, Defendant FDOT commenced several roadway improvement construction projects within the City of Miami. Specifically, the projects related to particular sections which correspond to portions along West Flagler Street and S.W. 1st Avenue:

- a. “Project 1” - Roadway Project 4148091-1-52-01 (Flagler Street between 14th Avenue and 27th Avenue) (Commenced on or about March 28, 2016, ***Estimated Completion in November 2017***);
- b. “Project 2” – Roadway Project 414633-1-52-01 (Flagler Street between 14th Avenue and 2nd Avenue) (Commenced on or about June 6, 2016, ***Estimated Completion in Winter 2017***);
- c. “Project 3” – Roadway Project 414633-2-52-01 (S.W. 1st Street between S.W. 24th Avenue and 17th Avenue) (Commenced on or about August 15, 2016, ***Estimated Completion in Spring 2018***); and
- d. “Project 4 – Roadway Project 418312-2-52-01 (S.W. 1st Street between S.W. 17th Avenue and S.W. 6th Avenue) (Commenced on or about November 28, 2016, ***Estimated Completion in Summer 2018***)

(collectively hereinafter referred to as the “Project(s)”).

7. The purported intent of these aforementioned Projects was to reconstruct pre-existing roadways (including pedestrians sidewalks), update lighting to meet current building standards, improve water/storm drainage and update signalization along the various corridors of traffic.

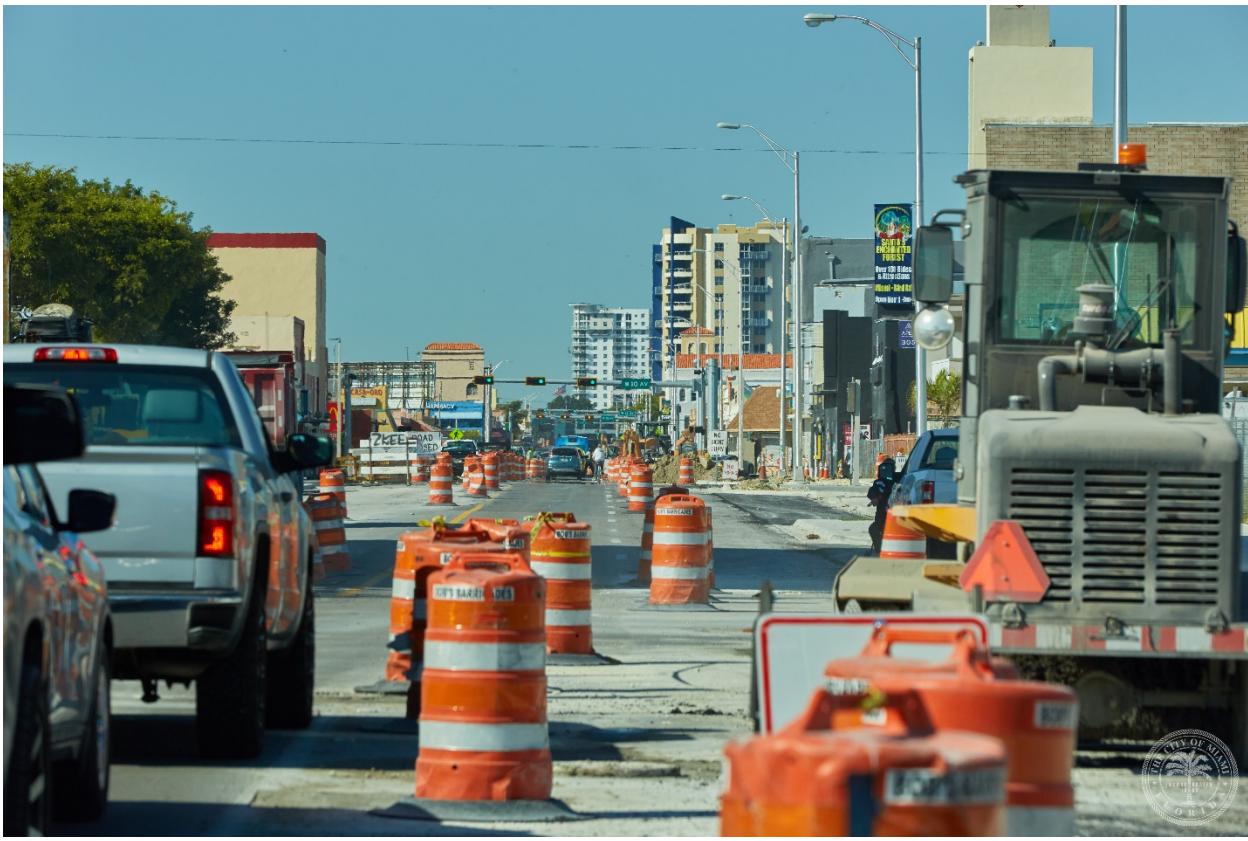
8. Throughout the various phases of construction, however, Defendant FDOT has reduced multiple lanes of traffic to from multi-lane to single-lane traffic and eliminated (extensively) on-street parking. (See photograph depictions below in Paragraph 11).

9. As a result of the roadway reconstruction work and the inherent subsequent delays, pedestrian traffic has been almost completely eliminated.

10. To date, several intersections have remained unfinished requiring elderly individuals to resort to crossing along make-shift, hazardous crosswalks at their own peril.

11. Various news reports and interviews of local business owners along the corridor have described the incomplete roadway Projects as a “war zone” which appear like a post-category 5 hurricane destruction zone. Recent photographs taken along the roadway reconstruction corridor provide the best example of the extensive traffic congestion, gross inconvenience, and remaining work to be completed:







12. CITY has made numerous pleas to Defendant FDOT seeking assurances that the roadway reconstruction Projects would no longer interfere or impede its elderly resident, small business owners, nor with its visiting tourists to this destination locale.

13. To date, Defendant FDOT continues to delay the conclusion of the construction work, and worse still, seek additional time in order to complete the various Projects. As is clearly reflected in the photograph depictions illustrated in Paragraph 11, substantial work remains to be completed—as indicated by the 2+ foot hole exhibited in photograph 4 or 5.

14. Indeed, in a recent letter dated May 31, 2018, from Florida's Secretary of Transportation Mike Dew, he acknowledged that the Projects have gone well past the estimated completion dates and further anticipated FDOT would be done by October 2018.

15. At this writing, several miles of roadway work remain incomplete and continue to perpetuate potential harm upon the CITY's elderly community and economically detrimental effects upon the small business owners along the various corridors.

16. As a result of Defendant FDOT's actions and inactions, CITY has suffered loss of an unknown number of business opportunities, disruption of business operations, and actual and consequential damages.

17. Defendant FDOT's actions/inaction and negligent conduct, constitute a public nuisance which impairs the CITY's global market value and ordinary business use, and interferes with CITY's residents from the free use and possession of their respective streets.

18. Defendant FDOT has continuously failed and/or refused to prevent obstruction of adjacent public roadways and secure the construction Project from construction hazards, falling debris and trespass which has severely imposed safety risks to CITY's elderly residents, small

business owners and visiting tourist from all over the world coming to enjoy the delights of our historic Little Havana neighborhood—one of the City of Miami's premier tourist destinations.

COUNT I- DECLARATORY AND/OR INJUNCTIVE RELIEF

19. Plaintiff CITY herein re-alleges, re-asserts and incorporates the allegations contained within Paragraphs 1 through 18 above as thought fully set forth herein this Count I.

20. Defendant FDOT is the owner and/or developer of the Projects.

21. Defendant FDOT continues to obstruct access to the roadways and businesses adjacent to the Projects, to cause a public nuisance, and to continue operating an unsafe and disorganized construction site adversely affecting the safety of the general public to Plaintiff CITY's elderly residents, small business owners and visiting tourists.

22. Plaintiff CITY has the right to protect its elderly residents, small business owners and visiting tourists from the hazards perpetuated upon Plaintiff CITY's roadways which have resulted in creating public nuisances and have interfered with their use and enjoyment of the Project roadways.

23. CITY's elderly residents, small business owners and visiting tourists have suffered, and continue to suffer, irreparable harm from the Defendant FDOT's failure and/or refusal to maintain and/or complete the respective construction sites of the Projects, free from unreasonably harmful interference with access to West Flagler Street and S.W. 1st Avenue, within the City of Miami.

24. Plaintiff CITY seeks entry of an Order compelling Defendant FDOT, its employees, officers, directors, representatives, laborers, materialmen and agents to: (i) expedite its efforts to complete the remaining roadway reconstruction work by no later than December 31, 2018; (ii) prevent FDOT from blocking and/or obstructing West Flagler Street and S.W. 1st

Avenue; and (iii) enjoining the Defendant from continuing its public nuisance they have created and continue to maintain as set forth and complained of herein.

25. Plaintiff CITY has suffered and continues to suffer immediate and irreparable injury, loss and damage as a result of Defendant FDOT's negligent conduct. At all material times, Defendant FDOT has failed and refused to ensure the development of the Project conforms to industry standards of safety and governing regulations for the construction of the subject project.

26. At all material times, Defendant FDOT has failed and/or refused to ensure that safeguards are in place to avoid the very construction hazards that have resulted in irreparable damage to Plaintiff CITY. Absent an injunction, Plaintiffs will have no avenue of recovery for Defendant FDOT's continuing negligent nuisance which has and will continue to result in irreparable damage to Plaintiff CITY.

27. Unless Defendant FDOT is permanently enjoined from continuing to create a public nuisance affecting Plaintiff CITY's elderly residents, small business owners and visiting tourists, including continued engagement in activities such as obstructing access to public sidewalks and impediment of vehicular and pedestrian access along the West Flagler Street and S.W. 1st Avenue corridors, and from continuing acts of public nuisance consisting of blocking ingress to and egress from business along the aforementioned corridors, CITY will be irreparably injured by:

- a. the continued negative impact on Plaintiff CITY's ability to manage, control, and operate its business affairs on its private properties free from Defendant FDOT's campaign of public nuisance, and disruption;

- b. the harm to Plaintiff CITY due to Defendant's public nuisance, including, without limitation, the falling debris and discharge of sand, dust, dirt and other construction particulate matter from the Projects and blocking of vehicular ingress and egress along West Flagler Street and S.W. 1st Avenue, that is difficult to quantify in money damages because of the difficulty in determining how many present, former, and potential customers and associates have been deterred by the continuing public nuisances associated with FDOT's disruptive construction activities;
- c. a loss of customer goodwill, because of the damage to Plaintiff CITY's reputation as a safe and convenient global destination to visit and patron; and
- d. because Defendant FDOT's have indicated a clear intent to continue their public nuisance creating activities on or near various private properties within the City of Miami, Plaintiff CITY will be forced to continuously disrupt their business operations and productivity to address the unabated nuisances of Defendant FDOT's, and file successive legal actions for each new act of public nuisance, unless Defendants are permanently enjoined from the foregoing conduct.

28. Plaintiff CITY has no adequate remedy at law for the harm caused by the public nuisances alleged herein.

29. Money damages are inadequate to compensate Plaintiff CITY for the unique injury that result from the public nuisance.

30. Other than by injunction, Plaintiff CITY has no adequate remedy at law because monetary damages are insufficient to prevent Defendant FDOT's continued negligence of the underlying Project which has damaged Plaintiff CITY's elderly residents, small business owners

and visiting tourists irreparably. The threat of injury to Plaintiff CITY's elderly residents, small business owners and visiting tourists outweighs any possible harm to Defendant FDOT which might accrue by entry of an injunction restraining, enjoining and/or compelling the expedient completion of the Projects and ceasing its negligent conduct complained of herein.

31. Defendant FDOT will not be harmed through the injunction of unreasonable activities constituting a public nuisance.

32. Plaintiff CITY has a substantial likelihood of success on the merits of this case which is straightforward. Defendant FDOT's negligence during the construction of the subject project has resulted (i) extensive delays in construction, (ii) falling debris and other hazardous matter severely damaging ingress and egress to/from small business properties along West Flagler Street and S.W. 1st Avenue, (iii) refusal to ensure the development and completion of the Projects conform to industry standards for safety, and (iv) refusal to ensure that safeguards are in place to avoid construction hazards that have resulted in irreparable damage to Plaintiff CITY's elderly residents, small business owners and visiting tourists.

33. Plaintiff CITY herein alleges that it has clean hands and the relief requested herein is in the public interest.

34. Plaintiff CITY requests that this Court enter a permanent and/or temporary injunction, without bond, in that the evidence presented by the Plaintiff at a hearing or affidavit shall conclusively establish pursuant to Florida Statute §60.01 *et seq.* that Defendant FDOT is:

- a. maintaining a public nuisance;
- b. operating and maintaining the place or premises where the public nuisance is occurring;

- c. the owner and/or agent of the ground upon which the public nuisance is occurring; and
- d. is conducting, operating, or maintaining a business or activity in connection with or incident to the maintenance of the public nuisance.

35. In order to prevent and restrain the continuation of the harmful activities described herein, which in the absence of injunctive relief is likely to occur, Plaintiff CITY is entitled to injunctive relief.

WHEREFORE, Plaintiff CITY respectfully requests this Honorable Court enter a Order temporary and/or permanent injunction, enjoining/restraining and/or compelling Defendant FDOT, its employees, officers, directors, representatives, laborers, materialmen and agents to: (i) expedite its efforts to complete the remaining roadway reconstruction work by no later than December 31, 2018; (ii) prevent FDOT from blocking and/or obstructing West Flagler Street and S.W. 1st Avenue; and (iii) enjoining the Defendant from continuing its public nuisance they have created and continue to maintain as set forth and complained of herein. Moreover, Defendant FDOT, its employees, contractors, agents, affiliates, parents, subsidiaries, and all other non-associated persons who act in concert with them directly or indirectly, from: (i) causing or allowing debris, sand, dust, dirt and other harmful construction matter from the Projects to interfere with Plaintiff CITY's elderly residents, small business owners and visiting tourists use and enjoyment of West Flagler Street and S.W. 1st Avenue; (ii) damaging or destroying the surrounding roadways and sidewalks, and further entering an Order requiring the Defendant to: (a) expedite the repair to any/all existing adjacent roadways and sidewalks; (b) monitor the debris, dirt and dust emitted from the Project to ensure compliance; and (c) pay just

compensation to Plaintiff, including attorneys' fees and costs and all such other relief as this Court deems just and proper.

COUNT II - PUBLIC NUISANCE

36. Plaintiff CITY herein re-alleges, re-asserts and incorporates the allegations contained within Paragraphs 1 through 18 above as thought fully set forth herein this Count II.

37. This is an action for public nuisance against Defendant FDOT.

38. By virtue of the continued state of falling construction debris and other hazardous matter, loud construction noise levels, obstruction to significant sections of West Flagler Street and S.W. 1st Avenue, all of which Defendant FDOT has failed to provide sufficient safeguards against, Defendant FDOT has created a public nuisance through the use of its agents to harm, offend and endanger the general public, Plaintiff CITY's elderly residents, small business owners and visiting tourists, which violate the laws of decency, obstruct the reasonable, comfortable and ordinary use and enjoyment of the adjacent public roadways and/or commercial property.

39. The Project(s) locations are a major artery of roads/thoroughfare and encompass public roads vital to the on-going needs of Plaintiff CITY's elderly residents, small businesses and visiting tourists.

40. The development of the Projects, coupled with the manner and operation of the Projects have resulted in Defendant FDOT's unreasonable, unwarranted and harmful actions and create a public nuisance.

41. Defendant FDOT's conduct has create significant safety hazards along the entire traffic corridor.

42. The ongoing construction activities/inactions have resulted in a public nuisance.

43. Defendant FDOT created and continues to maintain the public nuisance interfering with general health and public safety to Plaintiff CITY's elderly residents, small business owners and visiting tourists.

44. The Projects have harmed the general public in a manner and means that is not reasonable under the circumstances contrary to the general public health.

45. Further, Defendant FDOT's interference with the general public's health and safety has resulted in an unreasonable and substantial harm constituting a public nuisance.

46. As a result of the public nuisance created by Defendant FDOT, Plaintiff CITY has been damaged and continues to sustain present and on-going business damage as a direct and other incidental and consequential damage as a result of the public nuisance and/or negligence complained of herein.

47. The harm is offensive to an ordinary person who possesses a reasonable disposition, ordinary health, and reasonable sensitivities.

48. The public nuisance created by the Defendant FDOT is the direct and proximate cause of Plaintiff CITY's damages.

49. Defendant FDOT knew or should have known that it was substantially certain that the disorganized manner in which it has conducted the Projects would result in obstruction of public roadways, the dispersal of hazardous construction debris, uncontrolled loud construction noise levels, and various other safety hazards affecting Plaintiff CITY's elderly residents, small business owners and visiting tourist.

50. Plaintiff CITY has clean hands and the relief requested herein is in the public health interest.

WHEREFORE, Plaintiff CITY respectfully requests this Honorable Court enter judgment in its favor against Defendant FDOT, its employees, contractors, agents, affiliates, parents, subsidiaries, and all other non-associate persons who act in concert with them directly or indirectly which have brought about this public nuisance, including attorneys' fees and costs and all such other relief as this Court deems just and proper.

Dated this 10th day of December, 2018.

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